STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :

:

Petition to make housekeeping revisions

14-0316

and a compliance change to filed rate

formula.

DRAFT POSITION STATEMENTS AND DRAFT CONCLUSIONS SUBMITTED BY COMMONWEALTH EDISON COMPANY

Under the schedule approved by the Administrative Law Judges ("ALJs"), Commonwealth Edison Company ("ComEd") hereby submits its Draft Position Statements and Draft Conclusions for consideration by the ALJs.

Date: October 16, 2014 Respectfully submitted,

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PROPOSED ORDER

By the Commission:

On August 19, 2014, the Illinois Commerce Commission ("ICC" or "Commission") entered its Interim Order in this proceeding ("Interim Order"). The Interim Order granted Commonwealth Edison Company's ("ComEd") Petition to make a housekeeping revision and compliance change, but also "open[ed] the record in this matter under Sections 16-108.5, 10-101 and 9-201 of the Act, for the purpose of taking evidence and argument in Phase 2 related to the issue of the appropriate depreciation rate on ComEd's revenue requirement and the legal issue of whether or to what extent the portions of ComEd's rate formula that appear in schedules, work papers, or appendices that are not set forth in its applicable tariff are restricted from modification in a formula rate update and reconciliation proceeding and may be modified only in a separate "Article IX" proceeding." Interim Order at 4. Specifically, the Interim Order found that "[t]he Scope of Phase 2 will be to address:

- (A) The definition of "formula rate structure and protocols" as it is used in Section 16-108.5 as it applies to ComEd;
- (B) Determine whether changes to the formula rate schedules, appendices, and workpapers that support Schedules FR A-1 and FR A-1 REC in ComEd's formula rate tariff require Commission approval through a Section 9-201 filing; and
- (C) If the determination in (B) above is that the Commission must approve changes to all formula rate schedules, appendices and workpapers through a Section 9-201 proceeding, determine the necessary changes to be made to any of those documents to appropriately reflect the change in ComEd's depreciation rates between the reconciliation year and the filing year.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a status hearing was convened on August 21, 2014, before duly authorized Administrative Law Judges ("ALJ"s). A schedule was established for

testimony, hearings, and briefing. The Phase 2 direct testimony of Staff witness Ms. Theresa Ebrey (Staff Ex. 1.0) and ComEd witness Ms. Christine M. Brinkman (ComEd Ex. 1.0) was filed and served on September 11, 2014. The Phase 2 rebuttal testimony of Staff witness Ms. Theresa Ebrey (Staff Ex. 2.0) and ComEd witness Ms. Christine M. Brinkman (ComEd Ex. 2.0) was filed and served on September 24, 2014.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, an evidentiary hearing was convened in this docket before duly authorized ALJs at the Commission's offices in Chicago, Illinois, on September 29, 2014. The record was marked heard and taken on September 29, 2014.

I. BACKGROUND

On April 16, 2014, ComEd filed its third annual delivery service formula rate update, which became ICC Docket No. 14-0312, and ComEd simultaneously filed its "Verified Petition to Make a Housekeeping Revision and a Compliance Change to Performance Based Delivery Service Filed Rate Formula" ("Petition"), leading to the instant Docket. The Petition initiated the present docket for the purpose of making certain changes (a housekeeping change and a compliance change) to ComEd's performance-based formula rate, Rate DSPP – Delivery Service Pricing and Performance ("Rate DSPP"). Rate DSPP was established by the Commission in the 11-0721 Order, as modified by the 11-0721 Rehearing Order.

During ICC Docket No. 11-0721, the Commission also first considered the issue of how to define the formula rate structure for ComEd. While the Commission ruled on what schedules to attach to the Order itself ("traditional" revenue requirement schedules), and which formula rate Schedules and Appendices to set forth in full in Rate DSPP and which to include as part of the compliance filing, the Commission was not required to and did not rule on which Schedules and Appendices constituted the formula rate structure. The Commission ultimately directed that a rulemaking should commence, because it would "add clarity to the reconciliations that will take place pursuant to this statute, which should provide greater clarity for utilities, ratepayers and Commission Staff." Docket No. 11-0721 Order at 153. In doing so, the Commission did not accept Staff's claim that a rulemaking was premature, instead finding "that the sooner the rulemaking takes place, the sooner all involved in the rulemaking will familiarize themselves with what formula rates will entail." *Id*.

In ComEd's first formula rate update ("FRU") proceeding, similar questions were raised about use of the formula rate Schedules and Appendices in testimony and as attachments to final Orders, but again, the Commission did not rule on which Schedules and Appendices constituted the formula rate structure, and, instead, indicated that

¹ Because ComEd is a participating utility under EIMA, it is permitted to recover its delivery services costs through a formula rate. 220 ILCS 5/16-108.5(c).

² The Commission approved tariff and formula rate has been modified in limited respects by subsequent orders in separate Article IX dockets, as discussed later in this Order.

"there will be a rulemaking in which ComEd and other interested parties are encouraged to address this and other relevant issues regarding future formula rate filings." *Commonwealth Edison Co.*, ICC Docket No. 12-0321 (Order Dec. 19, 2012) ("12-0321 Order") at 105.

However, a rulemaking was not initiated, and the desired "clarity" has not yet been achieved. This has resulted in challenges by Staff and intervenors to different aspects of ComEd's formula rate in the annual formula rate updates, challenges that ComEd asserts were to be kept out of the FRUs, and instead addressed in Article IX dockets, under EIMA.

II. FORMULA RATE "STRUCTURE" UNDER EIMA

A. <u>ComEd's Position</u>

ComEd asserts that Staff's position that the Commission should define formula rate "structure" to mean ComEd's Rate DSPP, Tariff Sheet Nos. 417-437, which contain full recitation of summary Schedules Sch FR A-1 and FR A-1 REC – and thus that only changes to Sch FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing – should be rejected because it is contrary to EIMA and is not supported by the Commission's prior rulings on ComEd's formula rate. According to ComEd, Staff also takes the position that the Commission may change the approved formula rate "protocols" only in a separate Article IX Docket, and only as consistent with EIMA, and further indicates that its understanding is that the "protocols" are the components of the formula rate that address the items in Section 16-108.5(c)(4)(A) through (I). Ebrey Dir., Staff Ex. 1.0, at 4, 6. ComEd does not disagree with that portion of Staff's position. Thus, ComEd states it is uncontested that the protocols can be changed only in a separate Article IX docket.

1. Definition of Formula Rate "Structure" Under Section 16-108.5

ComEd submits that the key statutory provisions are contained in Section 16-108.5 of the Act. Section 16-108.5(c) of the Act states, in part:

A participating utility may elect to recover its delivery services costs through a performance-based formula rate approved by the Commission, which shall specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year

Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act.

220 ILCS 5/16-108.5(c) (emphasis added). Section 16-108.5(d)(3) states in part:

The Commission shall not, however, have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section.

Id. at (d)(3).

EIMA ratemaking allows utilities to recover their prudent and reasonable costs to ensure that a "participating utility shall recover the expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and the [EIMA ratemaking and reconciliation] process" 220 ILCS 5/16-108.5(b). ComEd avers that such assurance is not just an obligation owed to utilities; it is also for the good of customers and the State who will reap lasting benefits from the investment EIMA is intended to facilitate.

ComEd explains that unlike the annually updated input data (e.g., in ICC Docket No. 14-0312), the formula itself is not annually revised or updated under EIMA. That is, the specifics of the rate calculation and the identification of the specific inputs used to conduct it are found in the formula rate itself and are not a subject of an annual formula rate update proceeding, but rather may be the subject of a separate Section 9-201 proceeding.

Therefore, ComEd continues, the rate formula under EIMA is to provide certainty, specificity and transparency to allow for a set structure and protocols, with annual updates to the rate formula inputs using actual FERC Form 1 data as a foundation. ComEd submits that its rate formula structure, made up of all of the Schedules and Appendices incorporated in Rate DSPP, is consistent with EIMA and the company's annual update filings provide all of the necessary data and documentation required by the formula rate structure and protocols expressly set forth in EIMA.

2. Relevant History of ComEd's Formula Rate

ComEd asserts that the basis for the Commission including only two rate formula schedules in Rate DSPP In ICC Docket No. 11-0721 was a proposal by an Illinois Industrial Energy Consumers ("IIEC") witness to simplify the tariff because he thought it might make it more understandable to customers. Brinkman Dir., ComEd Ex. 1.0, at 12. The grounds were not based on any Commission finding or ruling regarding what is the scope of the rate formula structure and protocols. *Id.* The Commission's final Order (ICC Docket No. 11-0721, Order at 153) also adopted IIEC's proposal that a rulemaking be held in the future regarding the definition of formula rate structure and protocols. According to ComEd, adopting the IIEC's truncated version of ComEd's formula rate tariff, which lists and incorporates all of the Schedules and Appendices but sets forth in full only the two summary Schedules, was not a ruling on what constitutes ComEd's formula rate structure and protocols.

In ComEd's first formula rate update, ICC Docket No. 12-0321, the Commission addressed whether to attach a "populated" formula rate as an appendix to the final Order, or to use the "traditional" revenue requirement schedules. ComEd asserts that the Commission's decision to attach the traditional schedules to its order was not a decision on what constitutes the formula rate structure and protocols, based on the ruling itself and also from the fact that the Commission again indicated it was going to initiate the rulemaking promised in ICC Docket No. 11-0721. Brinkman Reb., ComEd Ex. 2.0, at 7-9.

ComEd further explains that subsequent to ICC Docket No. 11-0721, the Commission has approved changes to ComEd's rate formula in separate Article IX dockets. In June 2013, the Commission approved an update to ComEd's rate formula and tariffs to comply with the adoption of Public Act 98-0015 (*Commonwealth Edison Co.*, ICC Docket No. 13-0386 (Order June 5, 2013)). The latter filing included more substantial changes to the rate formula as a result of the issues addressed by the General Assembly. In that docket, the Commission held that ComEd's formula "rate sheets, and the revenue requirement calculations filed with and supporting them, are consistent with the provisions of Public Act 98-15" *Commonwealth Edison Co.*, ICC Docket No. 13-0386 (Order June 5, 2013) at 3, 4. The Commission ordered into effect ComEd's filed rate schedule sheets and approved the resulting revenue requirement modifications. *Id.*

ComEd submits that the Commission has similarly ruled in a formula rate update proceeding that changes to ComEd's formula in a FRU proceeding are improper. In ICC Docket No. 13-0318, the Commission ruled that three contested issues, Deferred Income Taxes on Reconciliation Balance, Weighted Average Cost of Capital ("WACC") Gross-Up, and Rate Base for Return On Equity ("ROE") Collar Calculation, were beyond the scope of the annual update and reconciliation proceeding. The December 18, 2013, Order (at 63) states in part:

The proposal to consider and change the structure and protocols of ComEd's formula rate related to the calculation of [deferred income taxes, the calculation of WACC, the ROE Collar Calculation] are beyond the scope of this Section 16-108.5 (d) annual update and reconciliation proceeding.

ComEd asserts that the three contested issues in ICC Docket No. 13-0318 did not change Sch FR A-1 or Sch FR A-1 REC, but rather required changes to ComEd's related Schedules and Appendices. According to ComEd, this Order indicates that the Commission recognized that the formula is not simply defined as Sch FR A-1 and Sch FR A-1 REC. All three issues were ultimately addressed in ICC Docket No. 13-0553, a follow-on proceeding initiated "pursuant to Section 10-113(a) of the Public Utilities Act (220 ILCS 5/10-113(a)) to determine whether the company has complied with Public Act 98-[00]15." Commonwealth Edison Co., ICC Docket No. 13-0553 (Order October 2, 2013) at 3. ComEd ultimately made related rate formula changes pursuant to the

Commission's November 26, 2013, final Order in ICC Docket No. 13-0553, in its compliance filing dated December 5, 2013.

Further, ComEd observes that the Commission did not make a change to ComEd's rate formula with respect to adding a second cash working capital (CWC) calculation in ICC Docket No. 13-0318. In that proceeding, the Commission found that the existing CWC calculation based on the reconciliation year should continue to be used in the calculation of the reconciliation year rate base, but that a second CWC calculation, one based on the filing year, should be used in the calculation of the filing year rate base. Commonwealth Edison Co., ICC Docket No. 13-0318 (Order Dec. 18, 2013) at 18. However, the Commission also recognized that: "Staff, in an effort to narrow the issues for the purposes of this docket, but without conceding the issue that the Company should have a CWC calculation for the filing year based on the filing year revenue requirement as Staff has proposed, Staff will not contest the Company's position that changes to the CWC schedules should be made outside of this proceeding." Id. at 17. Accordingly, ComEd filed the "housekeeping" Petition that initiated the instant Docket primarily so that the Commission could approve the addition of the second CWC calculation in an Article IX docket (while preserving ComEd's legal position). ComEd's filing in the current FRU, ICC Docket No. 14-0312, reflected the second CWC calculation, noting the ICC Docket No. 13-0318 finding and the formula change requested via the "housekeeping filing", i.e., Phase 1 of the instant proceeding. Brinkman Dir., ComEd Ex. 1.0, at 12 (referencing ICC Docket No. 14-0312, ComEd Ex. 3.0, at 19).

3. ComEd's Formula Rate Complies with EIMA and Past ICC Decisions

According to ComEd, its current Commission-approved formula rate governs the calculation of ComEd's 2015 Initial and 2013 Reconciliation Revenue Requirements, and any adjustment attributable to the "ROE Collar" in ComEd's pending FRU. ComEd's rate formula is not merely a general outline or description of calculations, but itself "specif[ies] the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year" 220 ILCS 5/16-108.5(c). The approved rate formula defines — mathematically and in narrative detail — how the revenue requirements and the ROE Collar adjustment (if any) are calculated and what input data goes into those calculations.³

Specifically, ComEd's Rate DSPP, attached as ComEd Ex. 1.01 to Ms. Brinkman's Direct testimony (ComEd Ex. 1.0), establishes and incorporates the

³ The formula calculates ComEd's 2015 Initial Rate Year Revenue Requirement using 2013 actual data (for which the FERC Form 1 for 2013 is the foundation) and certain 2014 projections, and uses the same formula to calculate ComEd's 2013 Reconciliation Revenue Requirement from the actual 2013 costs that are now available. The ROE Collar is also calculated based on actual 2013 data. 220 ILCS 5/16-108.5(d).

formulae that determine the delivery service revenue requirement and the resulting delivery service charges to customers, as well as the cost components that form the inputs to those formulae. It does so (in combination with the incorporated Schedules and Appendices) with sufficient specificity for the process to operate in a standardized and transparent manner and with annually updated inputs that reflect ComEd's actual costs to be recovered during the applicable year. Rate DSPP includes the detailed view of Sch FR A-1 and Sch FR A-1 REC, which effectively are executive summary schedules of ComEd's rate formula, to show the final rolled up revenue requirement. But equally important and necessary, Rate DSPP also specifies and incorporates by explicit reference the other Schedules and Appendices in ComEd's rate formula that develop the data rolled up into Sch FR A-1 and Sch FR A-1 REC. Brinkman Dir., ComEd Ex. 1.0, at 7-9.

ComEd submits that its Schedules and Appendices are necessary to achieve the standardization, transparency, and certainty called for by EIMA. For example, in order to use data from ComEd's FERC Form 1 in a manner that is transparent, the rate formula must specify what data to use. Further, for the data to be applied in a standardized manner, it must be set out and defined in the formula. ComEd asserts that this detail and transparency cannot be seen on Sch FR A-1 and Sch FR A-1 REC alone. The other Schedules and Appendices provide this transparency as they contain the references to the FERC Form 1 and to the specific workpapers that contain the source input data. Sch FR A-1 and Sch FR A-1 REC do not contain or identify specific cost inputs, but rather provide a high level summary of ComEd's Initial Rate Year, Reconciliation Year, and Rate Year Net Revenue Requirements. Brinkman Dir., ComEd Ex. 1.0, at 5-9.

4. The Ameren Order

ComEd notes that although Staff and Intervenors do not dispute that the Commission's Order in ICC Docket Nos. 13-0501/0517 ("Ameren Order") does not apply to ComEd, they argue that the Commission should reach the same conclusion here as it did in the Ameren proceeding. ComEd asserts that this argument glosses over the evolution of the formula rate structure definition from a promised rulemaking (in various dockets over three years), to addressing the issue in a one-off proceeding involving Ameren (and excluding ComEd), to the instant Docket, where the proposed redefining of ComEd's formula rate was injected at a late stage in this originally narrow housekeeping proceeding. The Ameren Order acknowledged that when Staff raised the formula rate interpretation issue in the Ameren docket, it "had been underway for some time and no indication was given that the outcome would be applicable to both AIC and ComEd. Had such an outcome been contemplated at the outset, ComEd may have chosen to participate." Ameren Order at 6.

⁴ ComEd referred to Sch FR A-1 as a "summary" schedule in its direct testimony in the 2011 formula rate case and indicated the same was true of Sch FR A-1 REC. ComEd Cross Ex. 1 at 11.

ComEd also notes that according to the Ameren Order, Staff intended that the Ameren order's conclusion regarding the interpretation of the formula rate be applied to ComEd without ComEd having an opportunity to be heard. Ameren Order at 6 ("Despite Staff's intentions reflected in Ameren Cross Ex. 1SH, the outcome of this proceeding will not be automatically applied to ComEd."). ComEd submits that the Ameren Order properly rejected Staff's proposal, and concluded that not only will the results of the Ameren proceeding not be automatically applied to ComEd, but "the Commission will consider the record in [ComEd's] case before deciding whether to do so." *Id.*

ComEd states that its motions to open an investigation and stay the Ameren order were denied without any discussion (oral or written) of the factual or legal issues. Instead, on August 19, 2014, the Commission issued an Interim Order adopting Staff's proposal that the Commission not open the long-contemplated rulemaking but rather "reopen" the record in this narrow housekeeping Docket for the purpose of broadening the scope and taking evidence and argument in a "Phase 2" on the formula rate structure and depreciation rate issues. Interim Order at 5. ComEd submits that this highlights its due process concerns. The Ameren case was not a rulemaking proceeding and was not initiated as an industry-wide proceeding of general applicability. The facts and circumstances of ComEd's Commission-approved formula rate were neither an issue in that proceeding nor within the scope of that proceeding. ComEd asserts that the Commission must decide this case "exclusively on the record for decision" in this case. 220 ILCS 5/10-103. Thus, according to ComEd, the Ameren decision cannot control the decision in this case. Moreover, it is well established that "orders [of the Commission] are not res judicata in later proceedings before it," Mississippi River Fuel Corp. v. Illinois Commerce Comm'n, 1 III. 2d 509, 513 (1953), and they certainly cannot bind parties like ComEd, who were not even a party to the other case.

According to ComEd, that the Ameren case cannot decide what filed sheets are part of ComEd's rates is not just a product of the Commission's jurisdiction and due process. As a factual matter, nothing requires Ameren and ComEd to include the same level of detail on each type of sheet or to have identical rate formulae – and the record establishes they do not. See Brinkman Reb., ComEd Ex. 2.0, at 14. ComEd submits that it is impossible to determine the structure or protocols of ComEd's Commission-approved formula rate without considering ComEd's actual formula rate. ComEd concludes that Staff's and Intervenors' assertion that ComEd will somehow be bound to follow and apply the determination in the Ameren case to which it was not a party and in which ComEd's Commission-approved formula rate was not at issue makes highly improper presumptions, could not be supported by substantial evidence based on relevant and necessary record evidence, and would violate both the Act's direction that Commission decisions be made exclusively on the record in that case, and due process hearing requirements.

5. Staff's Proposed Definition of Formula Rate "Structure" Is Arbitrary and Omits Essential Schedules and Appendices

ComEd argues that Staff witness Ms. Ebrey proposes to arbitrarily and narrowly define ComEd's formula rate structure and to make adjustments that are counter to EIMA and to the established formula approved by the Commission. Ms. Ebrey would have the Commission essentially redefine ComEd's formula rate as merely the two summary schedules, Sch FR A-1 and Sch FR A-1 REC, to the exclusion of the other Schedules and Appendices that are expressly referenced in Rate DSPP. ComEd contends her proposals are inconsistent with ComEd's complete Commission-approved rate formula and would allow calculation of revenue requirement components in a different way than the formula allows. Specifically, as discussed further below, Ms. Ebrey proposes a change in the way that depreciation is calculated in the rate formula in response to ComEd's latest (2014) depreciation study. Ebrey Reb., Staff Ex. 1.0, 9-10.

According to ComEd, Staff's position complicates, not simplifies, the annual FRU process, and results in the expenditure of more, not less, resources by the participating utility, Staff, and intervenors. ComEd states that by taking complex arguments about the formula structure and protocols out of the annual updates, the detail in the tariff serves to preserve resources and reduce the workload of the parties and the Commission. The debate that should occur in annual update proceedings should center on the specific inputs; and there should not be inefficient, costly, and uncertain relitigation of the formula structure and protocols themselves year-after-year in the FRU proceedings, which defeats the express language and intent of EIMA. But ComEd states that is what would result from the adoption of Staff's position. ComEd analogizes that Staff's assertion that the formula rate structure is only Sch FR A-1 and Sch FR A-1 REC is like saying that the blueprints to build a home are not the full set of drawings and plans, containing specific floor-by-floor and room-by-room detail, but rather the cover page alone, which shows what the finished home will look like upon completion.

ComEd contends there is no basis for concluding that its rate formula structure is anything other than all of the Schedules and Appendices incorporated in Rate DSPP, which collectively provide the certainty, standardization, and transparency required by EIMA. Sch FR A-1 and Sch FR A-1 REC present the applicable revenue requirements at a summary level. They do not provide the certainty, standardization, and transparency required by EIMA and provided by the other Schedules and Appendices in the rate formula spreadsheet. See Rate DSPP, 1st Revised Sheet Nos. 423-425 (in ComEd Ex. 1.01); Brinkman Dir., ComEd Ex. 1.0, at 13-14. ComEd submits it is highly unlikely that someone could determine how the revenue requirements are calculated (or discern many of the rulings made by the Commission regarding the rate formula) if they simply had the tariff in one hand and the FERC Form 1 in the other hand. Brinkman Dir., ComEd Ex. 1.0, at 12-13. Sch FR A-1 and Sch FR A-1 REC do not directly refer to any specific data in the FERC Form 1. To discern how the FERC Form 1 data feeds into the overall revenue requirement, one would have to review the other Schedules and Appendices, which drive Sch FR A-1 and Sch FR A-1 REC, and which also are listed in Rate DSPP (1st Revised Sheet No. 426). The Schedules and Appendices also

incorporate data in work papers listed in Rate DSPP (2nd Revised Sheet No. 427). Looking solely at the tariff and Sch FR A-1 and Sch FR A-1 REC, as Staff proposes for the purpose of determining how much of the formula rate is in play in an FRU, does not set forth the entirety of ComEd's rate formula structure and certainly does not provide the certainty, standardization, and transparency that EIMA requires.

- B. Staff's Position
- C. <u>CUB's Position</u>
- D. AG's Position

E. <u>Commission Analysis and Conclusion</u>

Before addressing the primary statutory construction issues at hand, the Commission will address certain preliminary issues raised by the parties. Having reviewed our prior formula rate orders for ComEd discussed above in the summaries of the parties' positions, the Commission observes that the orders in Docket Nos. 11-0721 and 12-0321 carefully avoided expressing a final opinion with respect to the meaning or scope of the Act's reference to and limitations on changes to the formula rate structure and protocols. Those orders do reflect our efforts to comply with the statutory directives that "changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of [the] Act" and that the Commission does not "have the authority in a [FRU] proceeding under ... subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c)" 220 ILCS 5/16-108.5(c) and (d). Further, as ComEd explained, some of the Article IX proceedings the Commission has conducted in this regard for ComEd have addressed items that were not explicitly contained within the four corners of Sch FR A-1 and Sch FR A-1 REC. This is consistent with the view that ComEd's formula rate structure and protocols are not limited to items reflected in Sch FR A-1 and Sch FR A-1 REC.

With respect to the Ameren Order, that order acknowledged the proceeding there was not one to establish policies, practices, rules or programs applicable to more than one utility and the order is not automatically applicable to ComEd. There is no reasonable basis for the Commission to consider itself constrained from a legal, factual, or policy perspective from considering this issue for ComEd on the merits. Rather, jurisdictional and due process considerations would prohibit that result. Thus, the Commission will consider the meaning of formula rate structure and protocols for ComEd on the merits based on the record presented here.

We disagree with arguments that we must reinterpret formula rate structure and protocols for ComEd to refer to Sch FR A-1 and Sch FR A-1 REC to protect the Commission's ability to establish just and reasonable rates. Staff and all parties may raise, and the Commission may consider, all applicable arguments as to the prudence and reasonableness of the cost inputs to Rate DSPP in an annual FRU proceeding. If and to the extent needed to ensure just and reasonable rates, the Commission may revise the structure and protocols of Rate DSPP in a Section 9-201 proceeding. We do not find any record support for the assertion that our ability to establish just and reasonable rates will be lost or diminished in any material way if we do not redefine ComEd's formula rate structure and protocols as summary Schedules Sch FR A-1 and FR A-1 REC contained in Rate DSPP. Further, while the restriction on considering changes to the formula rate structure or protocols is new in comparison to traditional pre-EIMA rate cases, the Commission finds nothing improper with this procedural limitation and it is clearly called for by the Act.

Having determined that there is no obstacle to considering the meaning of the relevant statutory language on the merits based on the record evidence here applicable to ComEd, the Commission now turns to that task. Subsections (c) and (d)(3) of Section 16-108.5 of the Act make clear that the structure and protocols "of a performance-based formula rate" are not to be reconsidered in an annual FRU proceeding under subsection (d). 220 ILCS 5/16-108.5(c) and (d). This is not disputed. What is at issue here is what constitutes the structure and protocols of a performancebased formula rate. Section 16-108.5(c) of the Act specifically provides that a formula rate must "specify the cost components that form the basis of the rate charged to customers with sufficient specificity to operate in a standardized manner and be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year" 220 ILCS 5/16-108.5(c). The clear intent of EIMA in this regard is to make the process by which costs are translated into rates on an annual basis clear, transparent, and certain. Thus, conceptually, the formula rate structure necessarily includes those Commission-approved documents explaining and describing how a participating utility meets such requirements.

The record here establishes that, for ComEd, those documents include the Schedules and Appendices referenced in and supporting Rate DSPP. Rate DSPP identifies the specific lines from those other Schedules and Appendices with amounts that flow directly into Sch FR A-1 and FR A-1 REC. ComEd Ex. 1.01 (1st Revised Sheet No. 423; 5th Revised Sheet No. 424; 3rd Revised Sheet No. 425). The other Schedules and Appendices similarly identify the specific source data for each line, whether another Schedule or Appendix or the particular page, column, and line from ComEd's FERC Form 1. Verified Petition, Attachment B. As ComEd notes, it is only the other Schedules and Appendices – and not Sch FR A-1 and Sch FRA-1 REC – that contain specific references to ComEd's FERC Form 1 consistent with EIMA's requirement that "inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1" 220 ILCS 5/16-108.5(c) and (d)(1). Thus, the Commission again finds, consistent with our original ruling in Docket No. 13-0386, that under EIMA changes to

the Schedules and Appendices supporting Sch FR A-1 and Sch FR A-1 REC of Rate DSPP constitute part of ComEd's formula rate structure and protocols that may not be revised in a subsection (d) FRU proceeding. In the event such changes are deemed necessary and appropriate, they must be considered and made in accordance with Section 9-201 of the Act in an Article IX proceeding.

III. CALCULATION OF DEPRECIATION ON PROJECTED PLANT ADDITIONS

A. ComEd's Position

Staff takes the position that the changes that would have to be made to Schedules other than Sch FR A-1 and Sch FR A-1 REC in order to apply the new depreciation rates filed in the FRU filing year to the reconciliation year data can be approved by the Commission in the pending FRU and do not have to be approved in an Article IX proceeding. Ebrey Dir., Staff Ex. 1.0, at 2-3. ComEd asserts that given the definition of formula rate "structure" and "protocols" set forth in EIMA and in the past Commission decisions discussed above, only the instant Article IX docket (or another Article IX docket) would be the proper docket to consider Staff's proposed change to ComEd's calculation of depreciation on projected plant additions. ComEd asserts, as explained below, that it is inappropriate and unnecessary to effect a change as to the reconciliation year data based on a change in the depreciation rates after the reconciliation year and in the filing year for Initial Rate Year rate-setting purposes.

1. ComEd's Depreciation Calculation was Litigated and then Agreed To in Its Initial Formula Case, ICC Docket No. 11-0721

ComEd's Commission-established rate formula calculates depreciation for the Initial Rate Year revenue requirement different than depreciation for the reconciliation revenue requirement. Brinkman Dir., ComEd Ex. 1.0, at 14-15. To the extent ComEd has updated depreciation rates as a result of an updated depreciation study that is performed once every five years and that is filed after the reconciliation year (and thus not reflected in the FERC Form 1 for the reconciliation year)⁵, ComEd reflects those new rates in relation to projected plant additions for the Initial Rate Year revenue requirement. ComEd maintains that calculating depreciation for the Initial Rate Year in this manner follows the methodology agreed to by ComEd and Staff in ICC Docket No. 11-0721. EIMA requires that "inputs to the performance-based formula rate for the applicable rate year [(here, 2015)] shall be based on final historical data reflected in the utility's most recently filed annual FERC Form 1 [(here, 2013)] plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed [(here, 2014)]." 220 ILCS 5/16-108.5(d)(1). ComEd asserts this is what it has done and what was agreed to and established in Docket No. 11-0721. According to ComEd, Staff unnecessary proposes to further

⁵ In ICC Docket No. 07-0566, the Commission ordered, at Staff's recommendation, that ComEd complete a depreciation study every **five** years (*Commonwealth Edison Co.,* ICC Docket No. 07-0566 (Order September 10, 2008) at 235).

adjust the amounts reflected in the final historical data from ComEd's most recent FERC Form 1.

ComEd states that Docket No. 11-0721 included a well-vetted agreement between ComEd and Staff witnesses, which can be summarized as follows:

- In ComEd's direct testimony in ICC Docket No. 11-0721, the initial proposal to calculate projected depreciation expense in the formula was to apply depreciation rates to the total projected plant additions without the use of weighting (ICC Docket No. 11-0721, ComEd Ex. 4.1, App 8);
- In Staff direct testimony, a recommendation was made to use "average" plant additions to calculate the projected depreciation expense (ICC Docket No. 11-0721, Bridal Direct, Staff Ex. 5.0, 6:116);
- In response to this proposed adjustment, ComEd provided an alternative calculation for App 8 in rebuttal testimony in that proceeding (ComEd Ex. 12.5) to address the concerns of Staff. ComEd Ex. 12.5 included the weighting of the plant additions taking the rate year additions and the forecasted additions and dividing by two (2);
- Staff, in their rebuttal testimony, agreed to this calculation of depreciation expense;
- ComEd further agreed with Staff to adjust the proposed method of calculating depreciation on the projected plant additions as originally presented in ComEd Ex. 12.5 to include a footnote to indicate that if FERC Form 1 depreciation rates are different from the most recent deprecation study, then the rates from the most recent depreciation study will be applied to the projected plant additions. See ComEd Ex. 13.01, App 8 in the current FRU proceeding, ICC Docket No. 14-0312, for this footnote. Staff's Initial Brief in ICC Docket No. 11-0721 also acknowledged the acceptance of the updated ComEd Ex. 12.5 and included the formula with footnote.

Brinkman Dir., ComEd Ex. 1.0, at 14-15; see also Brinkman Reb., ComEd Ex. 2.0, at 17-19. ComEd indicates that given Staff's (Mr. Bridal's) agreement with ComEd in ICC Docket No. 11-0721, it is concerned that in ComEd's current FRU proceeding, ICC Docket No. 14-0312, Staff (Ms. Ebrey) proposes to use an alternate calculation to derive the projected depreciation expense for the Initial Rate Year.

The crux of the issue in ICC Docket No. 11-0721 involved projected depreciation, and as discussed in ComEd witness Brinkman's testimony, ComEd's position was fully vetted and agreed to by Staff (Mr. Bridal) not only in testimony but in Staff's Initial Brief, which cited the exhibit containing the calculation that both Staff and ComEd agreed to. Brinkman Reb., ComEd Ex. 2.0, at 17-18. Ms. Ebrey was a witness in ICC Docket No. 11-0721 and presumably knew that that was the docket to establish the formula rate

structure. The mere fact that depreciation rates, an input, have changed should not be reason for the entire calculation of the Initial Rate Year projected depreciation to change.

Further, according to ComEd, Ms. Ebrey appears to introduce a new element to the calculation by removing the use of weighted average additions in the calculation of projected depreciation and basing the calculation on year end projections. ComEd has used weighted additions in the calculation of projected depreciation in the last two formula rate update proceedings with no challenge from any party. The updated depreciation study does not change that calculation. (Brinkman Reb., ComEd Ex. 2.0 17:381-383). ComEd submits that it is precisely this back and forth – what is acceptable and agreed to one year is challenged or rejected the next year – that EIMA was intended to eliminate.

2. Staff's Proposed Adjustment Is Unnecessary as it is an Estimate and the Actual Depreciation Will Be Reconciled in Any Event

ComEd notes that projected depreciation expense is only one input of many into the total revenue requirement calculation. The formula rate uses FERC Form 1 balances for both the reconciliation and Initial Rate Year calculations (with limited exceptions directed by the statute or by the Commission) with a later reconciliation as to the rate year (the year in which the rates being set are in effect) for those amounts that are under- or over-stated in the revenue requirement used to set rates that were collected. Considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event, ComEd submits that it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes. Brinkman Dir., ComEd Ex. 1.0, at 19.

According to ComEd, Ms. Ebrey's proposed adjustment requires a tariff change as it effects a change to Sch FR A-1 (related to transportation equipment). So, even under Staff's legal theory, the Staff proposal can be considered only in an Article IX Docket. Ms. Ebrey compares ComEd's calculation to Ameren's, stating that they are the same. Staff Ex. 1.0, 13:307-314. However, it appears that Ameren only reflected the changes in depreciation expense (and resulting changes to Accumulated Depreciation and Accumulated Deferred Income Taxes ("ADIT")), not changes to Distribution expense, in its formula rate changes. These changes to Distribution expense arise from depreciation expense changes related to transportation equipment, which drives changes to Sch FR A-1 and the tariff. Therefore, according to ComEd, it appears that Ms. Ebrey advocates for what she sees as theoretical precision but her proposal stops short of a complete acknowledgment of the total impact of the depreciation rate change. A full reflection of her proposed depreciation rate change would affect one of the Schedules that even Staff agrees may be changed only in an Article IX docket. Brinkman Reb., ComEd Ex. 2.0, at 14; see also ComEd Cross Ex. 1, DR – ComEd → Staff 1.06.

ComEd also contends that Ms. Ebrey's position fails to reflect that in order to correctly and fully apply her proposed adjustment, as it would actually appear on ComEd's books, the revenue requirement on Sch FR A-1 would require an adjustment to Distribution expense, which would make the amount different than is reflected on Sch FR A-1 REC. Brinkman Reb., ComEd Ex. 2.0, at 15. In fact, no matter how you adjust other Schedules and Appendices in the formula, including Sch FR C-1 and App 7, to adjust for a change in Distribution expense so that the amount recorded is different on Sch FR A-1 and Sch FR A-1 REC, a change to Sch FR A-1 would be necessary. *Id.* at 15-16.

ComEd makes clear that it does not favor Ms. Ebrey's proposed adjustment under any scenario. This calculation has been established, is an estimate as is Ms. Ebrey's proposal, and there is no reason to change it now. Any increase or decrease to a reconciliation amount will have an impact on interest; however, the mere fact that interest is calculated on a revenue requirement including estimated depreciation is not harmful to customers. Brinkman Dir., ComEd Ex. 1.0, at 16. In other words, no matter whether the estimate is slightly higher or slightly lower, customers only pay interest on the reconciliation balance resulting from that specific estimate. Customers will not pay too much interest or too little, regardless of whether the depreciation rate adjustment is done now or at the time of reconciliation. If the estimate is low, the eventual reconciliation balance will be greater. Customers will pay more interest, but they will also pay lower initial rates and gain the benefit of the use of those funds pending reconciliation. If the estimate is high, more costs are recovered up front, but the reconciliation balance and any interest will necessarily be reduced. Also, to the extent there is any over-recovery, ComEd pays interest to customers on that over-recovery. Brinkman Dir., ComEd Ex. 1.0, at 16-17.

ComEd submits that the current methodology used to calculate projected depreciation expense should continue to be used in ComEd's formula rate update cases. The current methodology of calculating projected depreciation expense for the Initial Rate Year is just that, a projection. Any other methodology would similarly be a projection as the actual data is not available. The Initial Rate Year revenue requirement will be reconciled using actual FERC Form 1 data for that year. Brinkman Reb., ComEd Ex 2.0, at 16; see also ComEd Cross Ex. 1, DR − ComEd → Staff 1.05. Further, ComEd performs depreciation studies once every five years, thus ComEd's depreciation rates will more often than not be the same for the Reconciliation Year as well as the Initial Rate Year. This calculation was litigated in ICC Docket No. 11-0721 and a methodology was agreed upon. There is no need to change this calculation now.

B. Staff's Position

C. Commission Analysis and Conclusion

Based on the arguments and testimony submitted in this proceeding, the Commission finds that Staff's proposed depreciation adjustment would require changes not only to the Schedules and Appendices incorporated in Sch FR A and Sch FR A-1 REC, but Sch FR A and Sch FR A-1 themselves. Thus, we find that it would violate EIMA to make Staff's depreciation adjustment outside of an Article IX proceeding. We also find that considering the infrequency of depreciation rate adjustments, the impact to the already approved formula structure, and the fact that the Initial Rate Year calculation is an estimate that will ultimately be reconciled in any event, it is unnecessary to change the calculation of depreciation expense related to the Initial Rate Year as Staff now proposes. The current methodology was the result of the specific consideration of this issue in ICC Docket No. 11-0721, and we find no valid reason to change it now. Thus, the current Commission-approved methodology to calculate projected depreciation in ComEd's formula update cases is reasonable and approved, and should continue to be used by ComEd in its FRU filings.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has subject-matter jurisdiction and jurisdiction over the parties;
- (3) ComEd's formula rate structure consists of Sch FR A-1 and Sch FR A-1 REC, along with the other Schedules and Appendices expressly incorporated by reference in Rate DSPP; and
- (4) ComEd's continued use of its current Commission-approved methodology to calculate projected depreciation in ComEd's formula update cases is reasonable and approved.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Commonwealth Edison Company's formula rate structure consists of Sch FR A-1 and Sch FR A-1 REC, along with the other Schedules and Appendices expressly incorporated by reference in Rate DSPP.

IT IS FURTHER ORDERED that Commonwealth Edison Company's continued use of its current Commission-approved methodology to calculate projected depreciation in ComEd's formula update cases is approved.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 III. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this ____ day of November, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman